

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02

PLR-101318-07

Date:

January 23, 2007

In Re:

LEGEND:

Taxpayer =

Subsidiary1 =

Subsidiary2 =

Date 1 =

Date 2 =

Date 3 =

Tax Professionals =

Company Official =

Dear :

This responds to a letter dated December 19, 2006, requesting on behalf of Taxpayer an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Taxpayer to file an election under § 1.1502-91(d)(4) of the Income Tax Regulations to treat the loss subgroup parent requirement as satisfied with respect to Subsidiary1 and Subsidiary2 for the consolidated group of which Taxpayer was the common parent for the tax year ended Date 1. The material information submitted for consideration is summarized below.

Taxpayer was the common parent of a consolidated group, consisting of Taxpayer, Subsidiary1, and Subsidiary2, in the tax year ended Date 1. Taxpayer purchased all of the issued and outstanding stock of Subsidiary1 and Subsidiary2 on Date 2 from an unrelated seller (the "Acquisition"). Each of the purchased corporations became members of Taxpayer's consolidated group simultaneously. In addition, Subsidiary1 and Subsidiary2 were members of the seller's affiliated group immediately prior to the Acquisition, and thereby were affiliated with each other immediately before becoming members of Taxpayer's consolidated group.

Taxpayer's return was timely filed for the tax year ended Date 1. However, for various reasons, an election in respect of Subsidiary1 and Subsidiary2 to treat the loss subgroup parent requirement as satisfied was not timely filed. Subsequent to Date 3, the date the return was timely filed, it was discovered that a valid election had not been filed. Thereafter, this request was submitted, under § 301.9100-3, for an extension of time to file a valid election. The period of limitations on assessment under § 6501(a) of the Internal Revenue Code has not expired for the taxable year for which the election should have been filed or for any subsequent taxable year.

Section 1.1502-91(d)(4) provides that a consolidated group may elect to treat acquired corporations as meeting the loss subgroup parent requirement immediately after they become members of the group, if the common parent of the acquiring group makes an election with respect to those members. Section 1.1502-96(e) provides the time and manner of making the election.

Pursuant to § 1.1502-96(e), the election should state the following: "THIS IS AN ELECTION UNDER § 1.1502-91(d)(4) TO TREAT THE FOLLOWING CORPORATIONS AS MEETING THE REQUIREMENTS OF § 1.1502-91(d)(1)(ii) AND (d)(2)(ii) IMMEDIATELY AFTER THEY BECAME MEMBERS OF THE GROUP." [List separately the name of each corporation, its E.I.N., and the date that it became a member of the group]. Section 1.1502-96(e)(3) provides that the statement must be filed by the common parent with the group's timely filed income tax return for the consolidated return year in which the members with respect to which the election is made become members of the group.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

In this case, the time for filing the election is fixed by the regulations (i.e. § 1.1502-91(d)(4)(i) and § 1.1502-96(e)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the election, provided Taxpayer establishes it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government.

Information, affidavits, and representations submitted by Taxpayer, Tax Professionals, and Company Official explain the circumstances that resulted in the failure to timely file a valid election. The information establishes that Taxpayer reasonably relied on a qualified tax professional, who failed to make, or advise Taxpayer to make, the election and that the interests of the Government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the affidavits submitted and the representations that have been made, we conclude that Taxpayer has established that it acted reasonably and in good faith in failing to timely file the election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government.

Accordingly, we grant an extension of time under § 301.9100-3, until 45 days from the date on this letter, for Taxpayer to file the election to treat the loss subgroup parent requirement as satisfied for the tax year ended Date 1, as described above.

The above extension of time is conditioned on Taxpayer's consolidated group's tax liability, if any, not being lower in the aggregate for all years to which the election

applies, than it would have been if the election had been made timely (taking into account the time value of money). No opinion is expressed as to Taxpayer's consolidated group's tax liability for the year involved. A determination thereof will be made upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that Taxpayer's consolidated group's liability is lower. Section 301.9100-3(c).

Taxpayer should file the election in accordance with §1.1502-91(d)(4) and § 1.1502-96(e). Taxpayer's return must be amended to attach the election statement required by § 1.1502-96(e)(2). A copy of this letter should be attached to the election statement. Alternatively, if Taxpayer files its amended return electronically, Taxpayer may satisfy this latter requirement by attaching a statement to its return that provides the date and the control number of the letter ruling.

No opinion is expressed as to the tax effects or consequences of filing the election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from filing the election late that are not specifically set forth in the above ruling. For purposes of granting relief, we relied on certain statements and representations made by Taxpayer and/or its representatives. However, all essential facts must be verified. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)